

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 538 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

SHITALBHAI SHOBHRAJ

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Appearance:

MR M.R. Mengdey for Mr.SN SHELAT for Petitioner  
MR KV GADHIA for Respondent No. 1

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CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 06/10/2000

ORAL JUDGEMENT :

The present petition is filed by Ahmedabad Municipal Transport Service (AMTS) against an order passed by the Labour Court, Ahmedabad in Reference (LCA) No.1255 of 1987, whereby the Labour Court had granted the

Reference filed by the respondent, workman vide its award dated 3.9.1991, ordering for reinstatement with full back wages and with all consequential benefits. This Court issued rule on 9.2.1992 and refused interim relief as regard reinstatement is concerned. However, so far as back wages is concerned stay was granted.

2. The facts giving rise to the present proceedings are that the respondent workman while on duty on 26.6.1986, while driving bus no.822 of the present petitioner, i.e. AMTS, met with an accident at 8.15 PM at the Sardar Bridge, while he was plying the bus from Paldi to Calico Mills. An injury was caused to the cyclist resulting into the death of the said cyclist on 27.6.1986.

3. The Labour Court while dealing with the submissions made by the learned advocate appearing for the AMTS has observed that the decision of the criminal court is not binding to the Labour court and that the Inquiry Officer was not in a position to examine the eye witnesses to the incident and that the Panchnama, etc. are not produced and therefore, it is not possible to infer as to whether the cyclist was in fact on the right hand side of the bus and that the bus was driven on the wrong side. The Labour Court has also appreciated the facts of the case by stating that there was a Bus Stand near the place of the incident and that some of the passengers approached the bus from the Bus Stand and some passengers alighted from the bus. Therefore, there was no question of the bus being driven at full speed. The Labour Court did not believe that the bus was driven at full speed and that there was any negligence on the part of the bus driver. Mr.M.R.Mengdey, learned advocate submitted that the Labour court committed grave error when it did not take into consideration the earlier 27 offences committed by the respondent. and the present one is the case that proved to be a fatal accident and therefore, the order of dismissal was just and proper and that the Labour Court ought to have interfered with the order of dismissal passed by the department. The Labour Court brushed aside the aforesaid submission on the ground that the details of those 27 offences/ incidents recorded against the respondent- workman are not placed before the Labour court. The Labour Court has also tried to dilute the effect of 27 incidents/ offences by saying that the Labour Court had no information as to the nature of the said offences/ incidents and whether the offences are triable or otherwise. It is also observed by the Labour Court that the Inquiry Officer ought to have given a charge sheet and ought to have recorded offences and

then they should have come to the conclusion.

4. Taking into consideration the totality of the circumstances of the case this Court does not find any justification for awarding back wages to a person who is found to have been involved in an accident which has resulted into death of a cyclist, a young boy of 15 years. Since the reinstatement part is already implement and the respondent workman is working since then, i.e. since 1992 and no further incident is intimated at least to this Court as on date, the Court does not interfere with that part. However, the judgement and award of the Labour Court is modified to the extent that the respondent workman will not be entitled to any back wages.

5. The petition is allowed to the aforesaid extent only. Rule is made partly absolute with no order as to costs.

6th October 2000 (Ravi R. Tripathi, J.)

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